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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,751	02/08/2001	Beatrix Kottwitz	H-3491-PCT/U	7934

7590

10/22/2002

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EXAMINER

ELHILO, EISA B

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 10/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/701,751

Applicant(s)

KOTTWITZ ET AL.

Examiner

Eisa B Elhilo

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 February 2002. 7/23/02
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 12-18, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 12-18, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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Claims 1, 12-18 and 20-21 are pending in this application.

### DETAILED ACTION

#### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 12-18 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herbots et al. (WO Patent No. 98/07818).

Herbots (WO' P 818) teaches detergent compositions in a liquid, powder or granular forms (see page 12, last paragraph) comprising from 0.00024% to 0.048% of  $\alpha$ -amylase (BAN) as claimed in claims 1 and 12, (see page 11, second paragraph and page 12, first paragraph), from about 1% to about 25% percarbonate such as sodium percarbonate as claimed in claims 13 and 16-17, (see page 35, second paragraph and middle of page 57), a bleaching-activating transition metal complex as claimed in claim 15, (see page 37, second paragraph) and tetraacetylenediamine (TAED) as a compound that gives off peroxycarboxylic acid under perhydrolysis as claimed in claim 14, (see page 36, second paragraph). Herbots also teaches a method comprising the step of soaking, rinsing or pretreating of stained fabrics to provide fabric cleaning, stain removal, whiteness, softening, color appearance and dye transfer inhibition as claimed in claims 20-21, (see page 13 first paragraph). Regarding claim 18, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use an alkali

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metal having the claimed limitation because the reference teaches sodium percarbonate as an alkali metal as claimed which should have same morphology index as claimed.

The instant claims differ from the reference by reciting a detergent composition comprising one species of  $\alpha$ -amylase enzyme derived from *Bacillus amyloliquefaciens*.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a detergent composition and to select any of the species of the amylase genus that taught by reference, including  $\alpha$ -amylase of the claims, because an ordinary artisan would have the reasonable expectation that any of the species of the genus would have similar properties and thus, the same use as the genus as a whole.

#### ***Response to Applicant's Arguments***

2. Applicant's arguments filed April 8, 2002 have been fully considered but they are not persuasive.

With respect to the rejection based upon Herbots (WO' 818), Applicant argues that the reference does not teach to select and combine the claimed naturally occurring  $\alpha$ -amylase from *B. amyloliquefaciens* with the recited peroxidic oxidizing agent because these two elements are found separately in the art and is insufficient as a matter of law to establish prima facie obviousness. The applicant also argues that any prima facie obviousness of the claims is overcome by the comparative testing presented in the applicants' example 1 and 2. Further, the applicant argues that in the January 8, action, applicants secondary evidence of nonobviousness is not addressed at all, and applicants therefore, submit that the finality of the pending action should be withdrawn.

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The examiner respectfully, disagrees with the above arguments because the reference teaches and disclose detergent composition that related to one invention which comprises a number of amylase enzymes as main enzymes for their improved properties with respect to the activity level and the combination of thermostability and a higher activity level and the reference also teaches that  $\alpha$ -amylase species characterized by having a specific activity at least 25% higher than the specific activity of other amylolytic enzymes (see page 12, first paragraph). Further, the reference teaches other detergent components such as bleaching agents that comprises percarbonate and percarboxylic acids (see page 35, second and forth paragraphs) and, thus, a person of ordinary skill in the art would be motivated to select enzymes such as  $\alpha$ -amylase as claimed for their characteristic activity as taught by the reference and combines this enzyme with the bleaching agents to provide fabric cleaning, stain removal, whiteness maintenance, softening, color appearance and dye transfer inhibition as taught by the reference (see page 13, first paragraph). Therefore, the prima facie case of obviousness has been established. Further, the applicants have not presented any data or showing in Example 1 and 2 to overcome the rejection of art. The examiner advises the applicants to present a clear data or showing to indicate the criticality of  $\alpha$ -amylase derived from *B. amyloliquefaciens* and also to show that the claimed invention provides unexpected results over the prior art.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M-F (7:30-4:00).

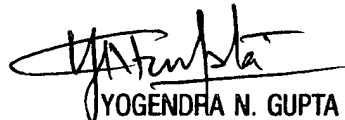
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7718 for regular communications and (703) 305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Elhilo

October 17, 2002



YOGENDRA N. GUPTA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700